Topfree Seven charges are dismissed, but ruling upholds state law that bans breast-baring

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"The government's underlying objective is to protect the general public from being accosted by offensive conduct in public places," Walz wrote.

District Attorney Howard R. Relin said his office will "definitely" appeal Walz's decision to Monroe County Court, on the grounds that bare chests are not a legitimate form of expression.

"I don't see it as a realistic First Amendment protection," Relin said. "It's like males who are bottomless making the same claim. I don't see that as a legitimate form of personal expression."

Walz's decision is not binding on the six other City Court judges, although they could rely on it if they chose. It would, therefore, only be strictly in effect every seventh month, when Walz is sitting on the arraignment portion of City Court. He is next assigned to that court in January.

Relin said his concern with Walz's decision is that women could make the same protest every day without facing prosecution, at least while Walz is the presiding judge.

"If people want to parade around Rochester in the nude, carrying signs protesting the state law, they can do that and we can't prosecute them," Relin said. "That isn't the intent of the statute."

Walz cited a recent decision by the state Court of Appeals that ruled a man's constitutional rights to free speech were not violated when he was arrested for bathing in the nude.

The women's case was different, however, because they were clearly trying to convey a specific message by removing their shirts, Walz said.

One of the defendants, Mary Lou Schloss, said yesterday that the women may have clouded the key issue by including the freedom of speech defense as grounds for dismissal.

"We may have made a mistake," she said. She feared that prosecutors might not appeal the case, and that the issue of sex discrimination may not be argued at a higher court.

Because the women's charges were dismissed, they cannot appeal, as they had planned to do if Walz ruled against them. Members of the group said last night that they were glad to hear of Relin's plans to appeal and expressed confidence that they would win in a higher court.

Schloss and another defendant, Ramona Santorelli, declined to comment on Walz's decision yesterday because they had not made a thorough reading of it.

The women said during their trial that the state law creates an obsession with women's breasts that might lead to violence against females. Prosecutors have claimed the opposite — that by removing their shirts, the women risk sexual attacks.

Walz rejected the prosecution's claim.

"This argument can be dismissed out of hand," Walz wrote. "The state has no authority to limit one person's freedom merely because it may induce others to violate the law.

"This argument is another example of men attempting to protect women by denying women their freedom," Walz said.

A psychologist testifying for the women said that by baring their breasts in a non-sexual context, women could reclaim their breasts from the "sex capitalists" — the male-dominated society that sells images of women's breasts for profit.

But the psychologist, Melissa Farley of Iowa, "also conceded that the public exposure of women's breasts is in conflict with the social mores of this country today," Walz wrote.

Besides Schloss and Santorelli, the other women charged with exposure were Nikki Craft, Kathleen Reilly, Deborah Seymour, Elise Jo Tooley and Lynn Zicari.

Topfree 7 charges dropped

Judge upholds right to expose breasts and anti-nudity law

By John O'Brien
Democrat and Chronicle

Women are free to expose their breasts publicly in Rochester, but only if they're clearly trying to get a message across, City Court Judge Herman J. Walz ruled yesterday.

Walz dismissed exposure charges against Rochester's so-called Topfree Seven on the grounds that they were exercising their right to freedom of speech when they took off their shirts last June in Cobbs Hill Park.

But he ruled against what the women said was the key issue in their protest — that a state law barring women, and not men, from exposing their chests is unconstitutional.

Walz's decision means a woman could, for example, bare her breasts to protest the state law, but she would be subject to prosecution if she went bare-chested just to sunbathe. The law does allow public exposure of breasts during breast-feeding and entertainment such as exotic dancing.

He ruled the state law was constitutional on the basis of sex discrimination because community standards have determined women's breasts to be an intimate part of the body.

"Defendants are asking the court for a new definition of nudity which does not encompass the female breast," Walz wrote in his 18-page decision released yesterday. "Yet, nudity is a social concept, a changing social perception."

The charges against the seven women are scheduled to be formally dismissed in court this morning.

The women wanted to be arrested to challenge the state law in court. It was the first time the law was challenged on the grounds of sex discrimination.

Until 1936, men in New York state were also barred from taking off their shirts in public. The law was changed after 42 men were arrested for going bare-chested on a Long Island beach.

Walz ruled that prosecutors met the burden of showing that, although the law is gender-based, it is constitutional because it protects an important governmental interest.

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